

Gary A. Ledford
11401 Apple Valley Road
Apple Valley, California 92308
(760)-240-1111
Fax (760)-240-3609

In Pro per

STATE OF CALIFORNIA

Energy Resources Conservation
And Development Commission

In the Matter of:)	Docket No. 97-AFC-1
)	
The Application for Certification)	WEDNESDAY, May 3, 2000
For the High Desert Power Project [HDPP])	Beginning at 10 a.m.
)	California Energy Commission
)	Hearing Room A
)	1516 Ninth Street
)	Sacramento, California 95814
_____)	

**POINTS AND AUTHORITIES IN SUPPPORT
OF MOTION TO SET ASIDE THE
REVISED PRESIDING MEMBER'S
PROPOSED DECISION (RPMPD) AND
REOPEN THE RECORD TO CORRECT
PROCEDURAL ERRORS AND CONFORM
THE EVIDENTIARY RECORD TO THE
FACTS**

Respectfully submitted:
May 1, 2000

GARY A. LEDFORD
PARTY IN INTERVENTION
IN PRO PER

**POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO SET ASIDE THE PRESIDING MEMBER'S
PROPOSED DECISION (RPMPD) AND REOPEN THE RECORD TO
CORRECT PREJUDICIAL PROCEDURAL ERRORS AND
CONFORM THE EVIDENTIARY RECORD TO THE FACTS**

Gary A. Ledford hereby submits the following points and authorities in support of the Motion to Set Aside the Revised Presiding Member's Proposed Decision and Reopen the Record to Correct Prejudicial Procedural Errors and Conform the Evidentiary Record to the Facts.

1. California Code of Regulations Title 20 Section 1702(a) states in relevant part that:

“Administrative record” means all materials that have been entered into the docket on the proceeding. The administrative record includes but is not limited to the hearing record (as defined below).”

2. California Code of Regulations Title 20 Section 1702(h) states in relevant part that:

“Hearing record” means the materials that the committee or commission accepts at a hearing. While the committee or commission may rely in part on any portion of the hearing record in making a finding, only those items properly incorporated into the hearing record pursuant to Section 1212 or 1213 are sufficient in and of themselves to support a finding. The hearing record includes:

- (1) Written and oral testimony presented at a hearing, including direct and cross examination of a witness.
- (2) Supporting documentary evidence or exhibits submitted with testimony.
- (3) Public document offered at a hearing or entered into the record at a hearing.
- (4) Public agency comment offered at a hearing or entered into the record of a hearing.
- (5) Other evidence that the committee accepts at a hearing.”

3. California Code of Regulations Title 20 Section 1212 states in relevant part that:

“The following rules of evidence shall apply to any adjudicatory proceeding of the commission and in such other proceedings as the commission may determine by order.

- (a) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant non-cumulative evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- (b) Oral or written testimony offered by any party shall be under oath.
- (c) Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross examine opposing witnesses on any matters relevant to the issues in the proceeding, and to rebut evidence against such party.
- (d) Hearsay evidence may be used to the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.
- (e) The presiding member may establish such additional rules as necessary for the orderly conduct of the proceeding.”

4. California Code of Regulations Title 20 Section 1213 states in relevant part that:

“During a proceeding the commission may take official notice of any generally accepted matter within the commission’s field of competence, and of any fact which may be judicially noticed by the courts of this state. Parties to a proceeding shall be informed of the matters to be noticed, and those matters shall be noted in the record, or attached thereto. Any party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority.”

5. California Code of Regulations Title 20 Section 1215(a) states in relevant part that:

“At any time during proceedings before a committee, any party may request that a ruling of the committee or presiding member be issued in the form of a written order.”

6. California Code of Regulations Title 20 Section 1215(b) states in relevant part that:

“Any party may petition the full commission to review any order prepared pursuant to subsection (a) of this section; provided, however, that rulings of the presiding member or committee may not be appealed during the course of hearings or conferences except in extraordinary circumstances where prompt decision by the commission is necessary to prevent detriment to the public interest. In such instances, the matter shall be referred forthwith by the presiding member to the commission for determination.

Gary A. Intervenor
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Apple Valley, California 92308
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STATE OF CALIFORNIA

Energy Resources Conservation And Development Commission

In the Matter of:)	Docket No. 97-AFC-1
)	
)	
The Application for Certification)		PROOF OF SERVICE
For the High Desert Power Project [HDPP])		
_____)		

I Kathie Mergal declare that on _____, I deposited copies of the attached **Points and Authorities in support of Motion to Set Aside the Revised Presiding Members Proposed Decision**, in the United States mail in Apple Valley California with first class postage thereon fully prepaid and addressed to the following:

Signed original document plus 11 copies to the following address:

California Energy Commission
Docket Unit
1516 Ninth Street, MS 4
Sacramento, CA 95814

In addition to the documents sent to the Commission Docket Unit, individual copies of all documents were sent to:

R.L. (Rick) Wolfinger, Vice President
High Desert Power Project LLC
250 West Pratt Street
Baltimore, MD 21201-2423

Thomas M. Barnett
Vice President and Project Manager
High Desert power Project, LLC
3501 Jamboree Road
South Tower, Suite 606
Newport Beach, CA 92660

Andrew C. Welch, P.E., Project Manager
High Desert power Project LLC
3501 Jamboree Road
South Tower, Suite 606
Newport Beach, CA 92660

Allan J. Thompson
21 "C" Orinda Way, #314
Orinda, California 94563

Ms. Amy Cuellar (Steck)
Resource Management International, Inc.
3100 Zinfandel Dr. Ste. 600
Sacramento, CA 95670-6026

Janine G. Kelly
Envirosense
19257 Dunbridge Way
Gaithersburg, MD 20879

Intervenors

California Unions for Reliable Energy (CURE)
Marc D. Joseph
Adams, Broadwell & Joseph
651 Gateway Blvd., Ste 900
So. San Francisco, CA 94080

Christopher T. Ellison
Ellison & Schneider
2015 H Street
Sacramento, CA 95814

Carolyn A. Baker
Edson & Modisette
925 L Street, Ste. 1490
Sacramento, CA 95814

Interested Parties

The Electricity Oversight Board

Gary Heath, Executive Director
1516 Ninth Street
Sacramento, CA 95814

Steven M. Marvis
California Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630

Curt Taucher
California Department of Fish and Game
Region V – Environmental Services
330 Golden Gate Shore, suite 50
Long Beach, CA 90802

Rebecca Jones
California Department of Fish and Game
Region V – Environmental Services
36431 – 41st Street
Palmdale, CA 93552

Nancee Murry
CDFG – Legal Affairs Division
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

Thomas W. Bilhorn
Earth Sciences Consultants
18174 Viceroy Drive
San Diego, CA 92128

Air Resources Board
Robert Giorgis, project Assessment Branch
P.O. Box 2815, 2020 L Street
Sacramento, CA 95814

Added 3/21/99
Charles Fryxell
Air Pollution Control Officer
Mojave Desert AQMD
15428 Civic Drive, Suite 200
Victorville, CA 92392

Brad Foster
3658 O'Banion road
Yuba City, CA 95993

Interested Organizations

Southern California Edison

Attn: Ted H Heath, P.E.
2131 Walnut Grove Avenue
Rosemead, CA 91770

I declare under penalty of perjury that the foregoing is a true and correct.

Kathie Mergal